



Indian Wills CLE – February 11th, 2016

Joe Hardgrave, Montana Legal Services Association

Drafting Indian Wills

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History of the Indian Wills Project

Why is having an Indian will so important?

- AIPRA
- Trust Land



What is Trust Land?

- Land held in trust by the federal government
- Trust responsibility and fiduciary duty

Part 1: BACKGROUND
AND HISTORY

Part 2:
UNDERSTANDING
ITI REPORTS

Part 3: DRAFTING
INDIAN WILLS

Part 4: EXECUTION
AND STORAGE

Allotment and Its Consequences

- General Allotment Act or Dawes Act, 1887
 - Land held in trust for 25 years
 - 80-160 acres
 - Assimilation and to protect Indians' interest
- Indian Reorganization Act, 1934
 - Extended trust period indefinitely
- Fractionation

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The American Indian Probate Reform Act (AIPRA)

- Enacted in 2004, effective in 2006
- Many of the provisions are designed to address fractionation
 - Single heir rule
 - Joint tenancy assumption
- AIPRA is considered a will “friendly” law

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Explaining Undivided Interests

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Limitations in Devising Indian Land

- Definition of “Indian” is most expansive under federal law
- Non-Indian cannot inherit trust property (life estate)

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Ways to Facilitate Consolidation

- Single person, single interest
- Joint tenancy with right of survivorship
- Life estate

Vs.

- Tenants in common



What is an Individual Trust Inventory(ITI) Report?

- Easiest to read BIA report
- Clients can get a free ITI report at their local BIA office
- It identifies allotment number, size, percentage of ownership, location and original allottee

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Example Individual Trust Inventory(ITI) Report

T ID: TA0071R
 STOR: ADERICHE

BUREAU OF INDIAN AFFAIRS
 INDIVIDUAL/TRIBAL INTERESTS REPORT
 ALL TITLE HOLDINGS

PAGE:
 DATE: 2/20/2
 CST TIME: 12:04

-OWNER----- BIRTHDATE: 12/19/1979
 CL NUMBER TRIBE NAME
 U 017693 BLACKFEET, MT

----- **B** --NAMES OR ALIASES-----
 NAME FIRST NAME MIDDLE NAME
 KING TARA LYNN
 KING TARA LYNN

-TRACT ID----- **D** TITLE **E** RESOURCES
 PFX NUMBER SFX PLANT LAND AREA BOTH
 03 BILLINGS, MT FORT PECK

F -----DATE OF LAST
 ExamDate / Vt
 5/12/1997

G BOWE, SAM
 ** ORIGINAL ALLOTEE **

SEC	TOWNSHIP	RANGE	COUNTY	ST MERIDIAN	LEGAL DESCRIPTION
16	027.000N	052.00E	ROOSEVELT	MT Principal	E NE SH

I SECTION COUNTY ACRES
 20.000 20

TOTAL SECTION ACRES: 20.000 20

OWNER----- DOCUMENT----- **K** **L**
 JT INT CLS TYP NUMBER NAME IN WHICH FIRST ACQUIRED FRACTION ACQUIRED
 A 11 IT TC1248980 BIRDSWING, TARA LYNN 5/288

M AGGREGATE SHARE **N** NG
 CONVERTED TO LCD TO LCD DE
 5 017
 288

The Nuts and Bolts of Writing an Indian Will

The most important thing about drafting a will is that it is clear

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Step 1: Title and Identification of Testator

Step 2: Revocation of All Prior Wills (Article I)

Step 3: Identification of Family (Article II)

Step 4: Personal Representative (Article III)

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Step 5: Trust or Restricted Land (Article IV)

Blackfeet Allotment 201 249, located in Glacier County, Montana

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Step 6: Trust Personalty (Article V)

Step 7: Non-Trust Property Bequests (Article VI)

Step 8: Other Specific Bequests of Non-Trust
Property (Article VII)

Step 9: Residue for Trust Land (Article VIII)

Step 10: Residue for Non-Trust Property (Article IX)

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Step 11: Guardian (Article X)

Step 12: Burial (Article XI)

Step 13: Invalidity Clause (Article XII)

Step 14: Signature of Testator and Attestation of
Witnesses

Step 15: Self-Proving Affidavit

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Proofread and Meet with Client

Executing an Indian Will

- Showing testator's competency
- Two disinterested witnesses
- Notary

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Storing an Indian Will

- BIA no longer stores wills
- Advise client of importance of original, to store in a safe place and let someone know where it is at
- Revoking or amending an Indian will

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QUESTIONS?

Would you like to volunteer at an Indian Wills Clinic with DPHHS, Aging Services Bureau?

Please contact John McCrea, Legal Developer,

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